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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 RICHARD W. MARTIN,

11 Petitioner,

12 vs.

13 ISIDRO BACA, *et al.*,

14 Respondents.  
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Case No. 3:15-cv-00036-RCJ-WGC

**ORDER**

16 Pursuant to this court's order, on May 18, 2015, petitioner paid the \$5.00 filing fee (*see* ECF  
17 #5). The docket reflects a second payment of \$5.00 on May 21, 2015 (ECF #6). Petitioner has  
18 requested a refund of the duplicate fee (ECF #7). The Clerk shall refund petitioner the second payment  
19 of \$5.00.

20 Next, the court has reviewed the petition pursuant to Habeas Rule 4, and the petition shall be  
21 docketed and served.

22 A petition for federal habeas corpus should include all claims for relief of which petitioner is  
23 aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking  
24 federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If petitioner is  
25 aware of any claim not included in his petition, he should notify the court of that as soon as possible,  
26 perhaps by means of a motion to amend his petition to add the claim.  
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1 Finally, petitioner has filed a motion for a file-stamped copy of his petition (ECF #3). He notes  
2 that the Clerk mailed him a copy of the petition stamped “received.” *Id.* The reason the copy was  
3 stamped only as “received” and not “filed” is that the petition is only filed if, after the court’s  
4 preliminary Rule 4 review, the court directs that it be filed and served. As such, in this case the petition  
5 will be filed as of the date of entry of this order. However, an inmate’s *pro se* habeas petition is deemed  
6 filed on the date that the petitioner dispatches the petition to prison personnel for mailing. Thus, this  
7 petition is deemed filed on January 15, 2015 (ECF #1-1, p. 1). Accordingly, petitioner has no need of  
8 a copy of his petition with the file-stamp, and, as he acknowledges that he has already received a copy  
9 of his petition stamped “received,” his motion is denied as moot.

10 **IT THEREFORE IS ORDERED** that the Clerk shall **FILE** and **ELECTRONICALLY**  
11 **SERVE** the petition (ECF #1-1) on respondents.

12 **IT FURTHER IS ORDERED** that respondents shall file a response to the petition, including  
13 potentially by motion to dismiss, within **ninety (90) days** of service of the petition, with any requests  
14 for relief by petitioner by motion otherwise being subject to the normal briefing schedule under the local  
15 rules. **Any response filed shall comply with the remaining provisions below, which are entered**  
16 **pursuant to Habeas Rule 4.**

17 **IT FURTHER IS ORDERED** that any procedural defenses raised by respondents in this case  
18 shall be raised together in a single consolidated motion to dismiss. In other words, the court does not  
19 wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple successive  
20 motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to  
21 dismiss will be subject to potential waiver. Respondents shall not file a response in this case that  
22 consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28  
23 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek  
24 dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to  
25 dismiss **not** in the answer; and (b) they shall specifically direct their argument to the standard for  
26 dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In  
27 short, no procedural defenses, including exhaustion, shall be included with the merits in an answer. All  
28 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

1       **IT FURTHER IS ORDERED** that, in any answer filed on the merits, respondents shall  
2 specifically cite to and address the applicable state court written decision and state court record  
3 materials, if any, regarding each claim within the response as to that claim.

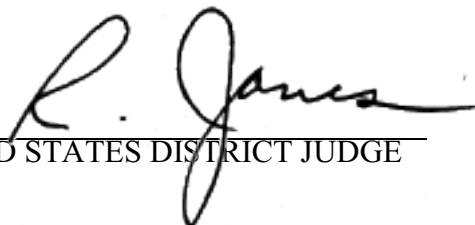
4       **IT FURTHER IS ORDERED** that petitioner shall have **thirty (30) days** from service of the  
5 answer, motion to dismiss, or other response to file a reply or opposition, with any other requests for  
6 relief by respondents by motion otherwise being subject to the normal briefing schedule under the local  
7 rules.

8       **IT FURTHER IS ORDERED** that any additional state court record exhibits filed herein by  
9 either petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits  
10 by number. The CM/ECF attachments that are filed further shall be identified by the number or  
11 numbers of the exhibits in the attachment. The hard copy of any additional state court record exhibits  
12 shall be forwarded – for this case – to the staff attorneys in **Reno**.

13       **IT FURTHER IS ORDERED** that the Clerk **SHALL REFUND** petitioner his \$5.00 duplicate  
14 filing fee.

15       **IT FURTHER IS ORDERED** that petitioner's motion for file-stamped copy of his petition  
16 (ECF #3) is **DENIED** as moot.

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18       Dated this 1<sup>st</sup> day of June, 2015.

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21       UNITED STATES DISTRICT JUDGE  
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